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HUMAN RIGHTS COMMITTEE
Sixty-sixth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Mexico

1. The Committee considered the fourth periodic report of Mexico (CCPR/C/123/Add.1) at its 1762nd and 1763rd meetings (CCPR/C/SR.1762 and 1763), held on 16 July 1999, and adopted the following concluding observations at its 1771st to 1773rd meetings, held on 22 and 23 July 1999.

A. Introduction

2. The Committee welcomes the timely submission of the fourth periodical report of Mexico and of an additional report and other information providing a detailed and up-to-date description of the human rights situation in the State party. It notes that the Committee's comments relating to consideration of the third periodic report of Mexico were taken into account by the State party when preparing its latest report. The Committee notes that the State party was represented by a large delegation which was able to reply to many of the Committee members' concerns in the course of the analysis of the report.

B. Positive factors

3. The Committee takes note with satisfaction of the improvements introduced since the submission of the previous report, including the decision of 8 June 1999, approved by Congress, to allow the National Human Rights Commission independence and the launch of several programmes proposed by the latter to improve the situation of women, children and the family, the

programme concerning presumed disappearances and the release of imprisoned indigenous persons. The Committee takes note of the establishment of National Programmes for the Protection of Human Rights, the Development Plan 1995-2000 and the Public Security programme, which are positive developments.

4. The promulgation of the Federal Public Advocacy Act and of the Federal Act for the Prevention and Punishment of Torture constitute significant advances as far as investigating human rights violations and preventing impunity are concerned.

5. The Committee notes with satisfaction the electoral reforms introduced with a view to holding more pluralistic and transparent elections.

C. Principal subjects of concern and recommendations

6. The Committee considers it a matter of the gravest concern that not all forms of torture are necessarily covered by law in all Mexican States, and that there is no independent body to investigate the substantial number of complaints regarding acts of torture and cruel, inhuman or degrading treatment. It is also a matter of concern that the acts of torture, enforced disappearances and extrajudicial executions which have taken place have not been investigated; that the persons responsible for those acts have not been brought to justice; and that the victims or their families have not received compensation.

> The State must take the necessary measures to attain full compliance with articles 6 and 7 of the Covenant, including measures to provide remedies against torture in all the States of Mexico.

7. The Committee is concerned that the possibility exists of placing on an accused person the burden of proof that a confession has been obtained by coercion, and that confessions obtained by coercion may be used as evidence against an accused person.

> The State party should amend the provisions of the law as necessary to ensure that the burden of proof that a confession used in evidence has been made by the accused person of his own free will shall lie with the State, and that confessions obtained by force cannot be used as evidence in trial proceedings.

8. The Committee is furthermore concerned by the increase of action by the armed forces within society, particularly in the States of Chiapas, Guerrero and Oaxaca, where they conduct activities pertaining to the police forces.

> Order should be maintained within the country through the civil security forces.

9. The Committee is deeply concerned by the fact that no institutionalized procedures exist for the investigation of allegations of violations of human rights presumed to have been committed by members of the armed forces and by the security forces, and that as a consequence those allegations are frequently not investigated.

The State party should establish appropriate procedures to ensure that independent investigations are conducted into allegations of violations of human rights involving members of the armed forces and the security forces and that the persons accused of such violations are brought to trial. The State should also establish effective remedies for the victims.

10. The Committee has taken note of the combined effect of the implementation of the 1995 Act Establishing Coordination between National Public Security Systems and the 1996 Act Against Organized Crime, as well as the extension of the concept of "flagrancy" to add to the number of circumstances in which an arrest can be made without a warrant from the competent official of the judiciary. This implies a serious threat to the security of persons. The Committee has also taken note of the fact that in cases of arrest in "flagrante delicto" and in cases of emergency an arrested person is handed over to the Office of the Public Prosecutor, which may hold that person in detention for 48 hours (and, in special circumstances, up to 96 hours) before bringing him or her before a court. The Committee deplores the fact that arrested persons do not have access to legal counsel before the time when they have to make a formal statement to the Office of the Public Prosecutor and that the situation regarding access by members of an arrested person's family was not clarified during consideration of the report of Mexico.

The State party should immediately amend the relevant legal provisions and establish procedures compatible with the provisions of article 9.

11. The criminal procedure established and applied in Mexico constitutes an obstacle to full compliance with article 14 of the Covenant, which requires a trial to take place before a judge, in the presence of the accused person and at a public hearing.

The State party should establish a procedure ensuring that accused persons enjoy all their rights in a suit at law in accordance with the above-mentioned article 14.

12. The Committee observes that, although a state of emergency has not been proclaimed in areas in conflict, the population has been subjected to derogations from its rights corresponding to a state of emergency, such as control points impeding freedom of movement.

All necessary derogations from the rights guaranteed by the Covenant must comply with the conditions laid down in article 4 of the Covenant.

13. The Committee is concerned at the obstacles to the free movement of foreigners, especially the members of non-governmental organizations investigating human rights violations on Mexican territory, and in particular the fact that residence permits have been cancelled and visas refused for the same reasons.

The State party should lift the restrictions on the access and activities of persons entering Mexico to investigate human rights violations.

14. The Committee deplores the serious violations of freedom of expression represented by the frequent murders of journalists and by the acts of intimidation making it difficult for representatives of the press to exercise their profession freely in Mexico or preventing them from doing so. It also deplores the existence of the offence of "defamation of the State".

Journalists should be guaranteed the freedom of expression laid down in article 19 and other related provisions of the Covenant so that they can carry on their activities without hindrance. Furthermore, the criminal offence of "defamation of the State" should be abolished.

15. The Committee also deplores the situation of street children, which is constantly worsening. These are the children who are at greatest risk of sexual violence and who are exposed to the practices of sexual trafficking.

The State should take effective measures for the protection and rehabilitation of these children in accordance with article 24 of the Covenant, including measures to end prostitution, child pornography and the sale of children.

16. The Committee is concerned at the level of violence against women, including the many reported cases of abduction and murder which have not led to the arrest or trial of the perpetrators and the many allegations of rape or torture by the security forces of women in detention which the latter are fearful of reporting.

The State party should take effective measures to protect the security of women, to ensure that no pressure is brought to bear on them to deter them from reporting such violations and to ensure that all allegations of abuse are investigated and the perpetrators brought to justice.

17. The Committee is concerned by information to the effect that Mexican women seeking employment in foreign enterprises in the frontier areas of Mexico ("maquiladoras") are subjected to pregnancy tests and required to respond to intrusive personal questioning, and that some women employees have been administered anti-pregnancy drugs. It is also concerned that those allegations have not been seriously investigated.

Measures should be taken to investigate all such allegations with a view to ensuring that women whose rights to equality and to privacy have been violated in this way have access to remedies and to preventing such violations from recurring.

18. The State party should approve measures to ensure equality of opportunity for women, their full participation in public life in conditions of equality and the removal of all remaining discriminatory provisions in regard to marriage, divorce and remarriage.

19. Despite the acknowledgement in article 4 of the Constitution of the multicultural composition of the Mexican nation, originally founded by its indigenous peoples, and the determination of the State party to settle the question of self-determination for indigenous communities, article 27 of the

Constitution seems to protect only certain categories of rights with regard to indigenous lands and still leaves the indigenous populations exposed to a wide range of human rights violations.

The State party should take all necessary measures to safeguard for the indigenous communities respect for the rights and freedoms to which they are entitled individually and as a group; to eradicate the abuses to which they are subjected; and to respect their customs and culture and their traditional patterns of living, enabling them to enjoy the usufruct of their lands and natural resources. Appropriate measures should also be taken to increase their participation in the country's institutions and the exercise of the right to self-determination.

20. The Committee notes that the law does not recognize the status of conscientious objectors to military service.

The State party should ensure that persons required to perform military service can invoke conscientious objection as grounds for exemption.

21. The State party should give wide dissemination to the text of its fourth periodic report and to these concluding observations. It should also include in its fifth periodic report, which it is due to submit in July 2002 information in response to these observations.